

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH MASCARENA,

Defendant.

CR 19–70–BLG–DLC

ORDER

Before the Court is United States Magistrate Judge Timothy J. Cavan’s Findings & Recommendations Regarding Revocation of Supervised Release. (Doc. 47.) On April 15, 2024, Defendant Mascarena filed an objection to the Findings and Recommendations requesting to appear before the undersigned prior to final imposition of sentence. (Doc. 49.) The Court set the matter for a final hearing on revocation of supervised release, (Doc. 50), but subsequently vacated the hearing when it came to the Court’s attention that Mascarena had been released to the custody of Yellowstone County pursuant to a writ of habeas corpus ad prosequendum, (Doc. 51). Mascarena has since withdrawn his objection. (Doc. 54.) Accordingly, there are presently no objections to Judge Cavan’s Findings and Recommendation in this matter and the Court need not hold a final hearing on revocation of supervised release before entering judgment.

Because neither party objected, they are not entitled to *de novo* review. 28

U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Cavan found, based on Mascarena’s admissions at the hearing, that he violated five conditions of his supervised release: the special condition that he abstain from the consumption of alcohol (Spec. Cond. 5); the special condition that he not purchase, possess, use, distribute, or administer marijuana (Spec. Cond. 8); the special condition that he participate in substance abuse testing (Spec. Cond. 6); the special condition that he participate in an outpatient program of for mental health treatment (Spec. Cond. 2); and the standard condition that he must follow the instructions of the probation officer related to the conditions of supervision (Stand. Cond. 13). (Doc. 47 at 5–6.)

Judge Cavan recommends that this Court revoke Mascarena’s supervised release and sentence him to a custodial sentence of eight (8) months imprisonment followed by twenty-eight (28) months of supervised release. (*Id.* at 6.) The Court finds no clear error in Judge Cavan’s Findings and Recommendations and adopts them in full.

Accordingly, IT IS ORDERED that Judge Cavan's Findings and Recommendations (Doc. 47) are ADOPTED in full.

Mascarena shall be sentenced in conformity with Judge Cavan's recommendation in the judgment filed concurrently with this Order.

DATED this 16th day of July, 2024.



Dana L. Christensen, District Judge
United States District Court